

## **REMARKS**

Claims 1-42 were presented in the application as filed on February 17, 2004 and claims 1-23 were cancelled in a Preliminary Amendment concurrently filed. Group I (claims 24-34 and 42) were elected in a Response filed December 6, 2006. Claims 27 and 28 are amended and claims 35-41 are cancelled. Claims 24-34 and 42 are pending. Reconsideration of the application and allowance of all claims pending herein are respectfully requested in view of the remarks below.

## **CLAIM OBJECTIONS**

Claims 27 and 28 have been amended to place the foregoing in proper dependent form. Claims 27 and 28 are now dependent on claim 24. Reconsideration of claims 27 and 28 is respectfully requested.

## **CLAIM REJECTIONS UNDER 35 U.S.C. § 112**

The Office action states that claims 33, 34, and 42 are rejected under 35 U.S.C. §112, first paragraph, because the specification does not provide enablement for non-carbon based particles.

The Examiner acknowledges that the specification is enabling for carbon based particles. Applicants' disclosure states in paragraph 22 that the processes used to fabricate carbon based particles may be used to fabricate the subject matter of claims 33, 34, and 42, non-carbon based particles. Thus, the specification teaches one possessing ordinary skill in the art how to make and use the non-carbon based particles, *i.e.*, via the procedures used to make the carbon based particles, without undue experimentation.

The Examiner states that because of the high temperature, there are so many factors that would not be feasible for the formation of particles having the structure and integrity as the one with graphite as a substrate and that the specification fails to address how the problems can be remedied/and or how the structure can be controlled. The Examiner though does not state what the "factors" are, what the related "problems" are, or what is the scientific basis of the foregoing.

Applicants' respectfully assert that the Examiner's statement above is a factual assertion that is not a proper official notice and/or based upon common knowledge. Therefore the Applicants respectfully request that the Examiner provide evidentiary support [see MPEP 2144.03] of the many factors that would not render the formation of non-carbon based particles feasible and the subsequent problems that need to be remedied, which render claims 32, 33, and 42 lacking enablement under 35 U.S.C. §112, first paragraph.

**CLAIM REJECTIONS UNDER 35 U.S.C. § 102**

The Office action states that claims 24-34 are rejected under 35 U.S.C. §102(b) as being anticipated by C.W. ("Heat spurs growth of tiny carbon trees"). Claim 24 is independent.

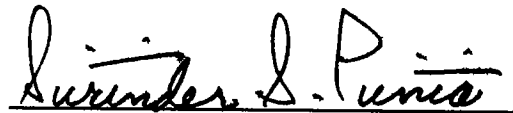
C.W. was has a publication date of March 25, 2000 and the effective date for C.W. as a reference is the same. The present application is a Divisional of U.S. Patent Application Serial No. 09/809,883 filed March 16, 2001. The claim for priority was made in a Preliminary amendment filed on February 17, 2004 contemporaneously with the filing of the present application. The claims of the present invention are fully supported by the parent application '883. Therefore, the effective priority date of the present claims is March 16, 2001. 35 U.S.C. § 102 essentially establishes what qualifies as prior art for both anticipation and obviousness purposes. C.W. is not available as a 35 U.S.C. § 102(b) anticipating reference.

Reconsideration of claims 24-34 is respectfully requested.

There being no other outstanding issues, it is believed that the application is in condition for allowance, and such action is respectfully requested.

If a telephone conference would be of assistance in advancing the prosecution of the subject application, Applicants' undersigned agent invites the Examiner to telephone him at the number provided.

***Respectfully submitted,***



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